



Comptroller General
of the United States
Washington, D.C. 20548

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Decision

Matter of: Harper & Harper

File: B-253167.2

Date: October 12, 1993

F. Mikell Harper, Esq., Harper & Harper, for the protester.
W. Graham Moses, Esq., Department of Housing and Urban
Development, for the agency.
Katherine I. Riback, Esq., and Paul Lieberman, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

1. Agency properly excluded protester's proposals from the competitive range where record establishes that proposals were evaluated in accordance with the solicitation's evaluation criteria and the agency reasonably concluded that the proposals would require major revisions to become acceptable.

2. Partial cancellation of solicitation after discussions was proper where agency reasonably determined that no technically acceptable offers were received for the services in question.

DECISION

Harper & Harper protests the award of contracts under request for proposals (RFP) No. 01-93-054, issued by the Department of Housing and Urban Development (HUD) for sales closing services. Harper contends that its proposals for areas 5 and 6 were improperly excluded from the competitive range. Harper also protests the failure of the contracting agency to award it contracts under the same solicitation for areas 2 and 8, for which the agency partially canceled the solicitation because none of the offers was technically acceptable. Harper contends that its proposals for these two areas complied with the solicitation's requirements.

We deny the protest.

The solicitation was issued on January 25, 1993, and sought proposals for sales closing services for single family properties owned by HUD and located within four specified

geographical areas within South Carolina.¹ Offerors were allowed to submit proposals for one or more areas and instructed that award of a fixed-price, indefinite quantity contract for a 2-year base period with two 1-year options would be made by individual area.

The RFP instructed offerors to submit separate technical/management and cost proposals, with the technical/management proposals to be divided into three sections. Offerors were to provide evidence of technical and management ability in section No. 1, specifically, to demonstrate their ability to prepare deeds and to review title information and to handle and safeguard large sums of money, and to provide evidence of staff capacity and ability to handle the closings anticipated by the contract. In section No. 2, offerors were to list projects in progress or completed within the last 2 years. In section No. 3, offerors were to describe their current or planned projects that might also make use of proposed resources or personnel, and explain how such multiple uses would be resolved. Award was to be made to the responsible offeror whose proposal was most advantageous to the government, price and other factors considered. The solicitation permitted multiple awards, and stated that the evaluation would be based upon the completeness and thoroughness of the proposal submitted.

Five offerors submitted proposals for areas 5 and 6 by the March 5 closing date. A technical evaluation board determined that only the proposal of Dallis Law Firm met the minimum requirements for each area, and listed points in Dallis's proposal for each area that required clarifications in negotiations. The board found that the remaining four offerors' proposals for areas 5 and 6, including Harper's,² were technically unacceptable because they failed to address the specific needs outlined by the RFP and would require major substitution of information concerning staffing and operational systems to become acceptable.

The three proposals received for area 2, and one (Harper's) received for area 8, were rated as technically unacceptable. Nonetheless, discussions were conducted that raised specific deficiencies in each proposal with each offeror. As a

¹The solicitation stated that the agency expects that the closing site will be located within the geographic boundaries of each area, and that in any event buyers are not expected to travel in excess of 60 miles (one way) to a mutually agreed upon site.

²Harper's proposals for all four areas appear substantially similar except that the subcontracting attorney proposed for each area is different.

result of these discussions, some proposals received a somewhat higher score, but all proposals remained technically unacceptable. The contracting officer then canceled the solicitation for areas 2 and 8.³

With respect to areas 5 and 6, Harper contends that its proposals met the solicitation requirements and points out that offerors were instructed to keep their proposals brief. In any event, Harper argues that it should have been afforded the opportunity to address the technical evaluation board's concerns in discussions.

The evaluation of proposals and the determination of whether an offer is in the competitive range are matters within the discretion of the contracting agency, since it is responsible for defining its needs and the best method of accommodating them. Automated Datatron, Inc.; California Image Media, Inc., B-215399; B-215399.2, Dec. 26, 1984, 84-2 CPD ¶ 700; Essex Electro Eng'rs, Inc.; ACL-Filco Corp., B-211053.2; B-211053.3, Jan. 17, 1984, 84-1 CPD ¶ 74. Generally, offers that are technically unacceptable as submitted and that would require major revisions to become acceptable may be excluded from the competitive range. Id. Where a proposal is found to be technically unacceptable and therefore outside the competitive range, the agency is not required to hold discussions with the offeror. Id.; Zuni Cultural Resource Enter., B-208824, Jan. 17, 1983, 83-1 CPD ¶ 45.

In reviewing an agency's technical evaluation and competitive range determination we will not independently evaluate proposals; rather, we will consider only whether the evaluation had a reasonable basis and was in accord with the listed evaluation criteria, and whether there were any violations of procurement statutes or regulations. Management Training Sys., B-238555.2, July 17, 1990, 90-2 CPD ¶ 43. Although we will closely scrutinize an agency decision which results in a competitive range of one, we will not disturb such a determination absent a clear showing that it was unreasonable. Native Am. Consultants, Inc.; ACKCO, Inc., B-241531; B-241531.2, Feb. 6, 1991, 91-1 CPD ¶ 129.

The technical evaluation board found that Harper's proposals for areas 5 and 6 were too "generic," and that they failed to specifically address HUD's needs. For example, regarding its prior experience, Harper's proposals did not contain any information concerning the volume and type of real estate work performed by the firm or list its main clients. The

³These requirements were subsequently resolicited under an invitation for bids.

proposals were supposed to demonstrate an adequately staffed office; yet, Harper's proposals failed to address what resources would be available should the work volume fluctuate.

The board noted that Harper's proposal evidenced that the firm is currently providing closing services for HUD in South Carolina in areas 3, 5, and 6, as indicated by a copy of the agency's latest monitoring review of Harper's services under that contract, which indicated some improvements in previous poor performance. However, the board downgraded the firm's performance in these areas due to the necessity for frequent agency reviews of the current contract, and evaluated Harper's current performance as marginally satisfactory.

Harper stated in its proposals that it has demonstrated that it has an adequately staffed and trained office by virtue of its performance in handling closings for HUD in three areas in South Carolina. The board noted that Harper's proposals did not provide detail concerning the credentials, current positions and real estate experience of the support staff, and determined that Harper's current support staff performance is characterized by frequent typographical and math errors, and that numerous errors by Harper's staff on the current contracts often require follow-up by HUD staff. Based on these deficiencies, Harper's proposal for area 5 received an average score of 63.7 points and its proposal for area 6 received a score of 63.3 points, out of a possible 145. By way of comparison, the initial average score for the awardee's proposal was 114.7 for area 5 and 115 for area 6.

In short, the lack of detail in Harper's proposal, coupled with its current performance, provided a reasonable basis for the agency's evaluation. Although Harper seems to contend that its capability to perform these contracts must be evident from its prior experience in providing closing services for HUD, the RFP required offerors to demonstrate their understanding of, and capabilities to perform, the requirements in the statement of work in their proposals. Offerors were specifically cautioned in the solicitation that evaluation would be based upon the completeness and thoroughness of the proposal submitted. Harper's proposal clearly fell short in light of these requirements.

As for areas 2 and 8, Harper contends that its proposal for these two areas did comply with the solicitation requirements such that HUD should not have canceled the RFP with respect to these areas.

Under Federal Acquisition Regulation § 15.608(b)(4), a procuring agency may reject all proposals received in response to an RFP if cancellation is clearly in the government's interest. Thus, as a general rule, in a negotiated procurement, the contracting agency need only demonstrate a reasonable basis to cancel a solicitation after receipt of proposals, as opposed to the "cogent and compelling" reason required to cancel an IFB where sealed bids have been opened. Xactex Corp., B-247139, May 5, 1992, 92-1 CPD ¶ 423. The absence of any technically acceptable offer constitutes a reasonable basis for canceling a solicitation. California Microwave, Inc., B-229489, Feb. 24, 1988, 88-1 CPD ¶ 189.


Here, after an examination of the information submitted by Harper after discussions, the technical evaluation board determined that Harper's proposals for areas 2 and 8 remained technically unacceptable. Regarding area 2, the board noted that Harper's additional information outlined Mr. Harper's experience, but that Mr. Harper would not be the primary agent providing the closing services in this area, and that it was not clear from Harper's submission what hours of supervision Mr. Harper would provide. The board viewed this as a critical omission because of the lack of experience of Harper's staff in title review and closings. Harper's proposal received a final score of 83 points out of a possible 145 for area 2. The technical evaluation board had virtually the same critique of Harper's revised proposal for area 8, for which the proposal also received a final score of 83 points.

We have reviewed Harper's proposals, and we conclude that the agency's assessment is well-founded and provides an appropriate basis to determine that the proposals for areas 2 and 8 are technically unacceptable. Since Harper's proposals were technically unacceptable for both areas, and Harper does not contend that any other technically acceptable proposals were submitted, the agency had a reasonable basis for its partial cancellation of areas 2 and 8 under the RFP.

Finally, contrary to the allegations of Harper, the record contains no evidence of bad faith by HUD in its dealings with Harper. We will not attribute improper motives to government officials on the basis of inference or supposition. Source AV, Inc., B-234521, June 20, 1989, 89-1 CPD ¶ 578. To the extent that the protester argues that the partial cancellation of the solicitation evidences bad faith on the part of agency officials, an agency properly may

decide to cancel a procurement even after extensive discussions have been held, where those discussions indicate to the agency that an acceptable proposal cannot be obtained. Xactex Corp., supra.

The protest is denied.


for James F. Hinchman
General Counsel